

NOV 29 2010
U.S. DISTRICT COURT
DISTRICT OF NEVADA
CLERK'S OFFICE
300 N. RENO AVENUE
RENO, NV 89501
(775) 335-8000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EUGENE A. MAUWEE, SR.,
#30400

Plaintiff,

vs.

JACK PALMER, *et al.*,

Defendants.

3:10-cv-00250-RCJ-RAM

ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The court now reviews the complaint.

I. Screening Standard

Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a prisoner's claims, "if the allegation of poverty is untrue," or if the action "is frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Id.* at 327. The critical inquiry is whether a

1 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. *See Jackson*
2 *v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

3 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
4 provided for in Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under
5 Section 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint. Review under
6 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*,
7 232 F.3d 719, 723 (9th Cir. 2000). A complaint must contain more than a “formulaic recitation of the
8 elements of a cause of action;” it must contain factual allegations sufficient to “raise a right to relief
9 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1965
10 (2007). “The pleading must contain something more...than...a statement of facts that merely creates a
11 suspicion [of] a legally cognizable right of action.” *Id.* In reviewing a complaint under this standard, the
12 court must accept as true the allegations of the complaint in question, *Hospital Bldg. Co. v. Rex Hospital*
13 *Trustees*, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to plaintiff and
14 resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

15 Allegations in a *pro se* complaint are held to less stringent standards than formal
16 pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S.
17 519, 520-21 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
18 Cir. 1990). All or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the
19 prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on legal
20 conclusions that are untenable (*e.g.* claims against defendants who are immune from suit or claims of
21 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful factual
22 allegations (*e.g.* fantastic or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever*
23 *v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

24 To sustain an action under section 1983, a plaintiff must show (1) that the conduct
25 complained of was committed by a person acting under color of state law; and (2) that the conduct
26 deprived the plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*, 466 F.3d 676, 689

1 (9th Cir. 2006).

2 **II. Instant Complaint**

3 Plaintiff, who is incarcerated at Lovelock Correctional Center (“LCC”), has sued the State
4 of Nevada, the Nevada Department of Corrections (“NDOC”), LCC’s Warden Jack Palmer, Associate
5 Warden Ron Halstead and Associate Warden Robert LeGrand. Plaintiff claims that he is a spiritual
6 leader and elder of Native American religious activities at LCC. He alleges the following: an officer
7 confiscated an eagle talon—a sacred Native American religious artifact—that was in plaintiff’s possession.
8 When his grievances were ultimately denied, plaintiff sought to send the sacred eagle talon home.
9 However, he was informed on March 24, 2010 that it had been destroyed. Plaintiff asserts violations
10 of his First, Eighth and Fourteenth Amendment rights.

11 While plaintiff purports to assert a claim for the deprivation of his First Amendment right
12 to free exercise of religion, the gravamen of plaintiff’s complaint is that he was deprived of the
13 opportunity to send his confiscated property home. In *Hudson v. Palmer*, the United States Supreme
14 Court held that intentional deprivation of an inmate’s property by prison employees does not violate the
15 Due Process Clause, provided that adequate state post-deprivation remedies are available. 468 U.S. 517,
16 533-534, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984). Nevada law provides for civil actions for the wrongful
17 deprivation of property by state officials. See NRS 41.031; NRS 41.0322. Plaintiff may seek redress
18 in the state system, but he cannot sue in federal court on the claim that the state deprived him of property
19 without due process of the law. Therefore, plaintiff’s claims for deprivation of property will be
20 dismissed with prejudice.

21 Plaintiff sets forth no allegations that implicate the First, Eighth or Fourteenth
22 Amendments. Accordingly, those claims are dismissed.

23 **III. Conclusion**

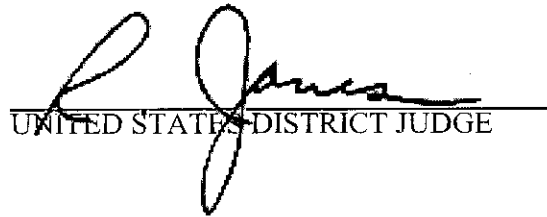
24 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE** the complaint (docket #1-
25 1).

26 **IT IS FURTHER ORDERED** that plaintiff’s complaint is **DISMISSED** with prejudice

1 for failure to state a claim for which relief may be granted.

2 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly and close
3 this case.

4
5 DATED this 29th day of November, 2010.

6
7 
8 UNITED STATES DISTRICT JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26